

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 22, 2005

**DAVALON HIGGINS v. QUENTON WHITE, ET AL.**

**Appeal from the Chancery Court for Davidson County**  
**No. 03-2377-I Claudia Bonnyman, Chancellor**

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**No. M2004-00412-COA-R3-CV - Filed on June 27, 2006**

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A prisoner in the custody of the Department of Correction was turned down for work release because an entry in his correctional record indicated that he was a member of a criminal gang. He subsequently filed a complaint under 42 U.S.C. § 1983 contending that it was a violation of his civil rights to label him as a gang member without a hearing and without giving him any opportunity to challenge the classification. He claimed that he had never been a member of any such group, and that he did not even know until his work release application was rejected that he had been stigmatized by being mistakenly labeled with a gang affiliation. The trial court dismissed the prisoner's complaint, holding that he did not have a constitutional right to any particular security classification. We agree with the court's determination of the constitutional question, but reverse the dismissal because we believe that the trial court had the authority to review his claim under the common law writ of certiorari.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Affirmed in Part, Reversed in Part, and Remanded**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Davalon Higgins, Nashville, Tennessee, Pro Se.

Paul G. Summers, Attorney General, Michael E. Moore, Solicitor General, Mark A. Hudson, Senior Counsel, for the appellees, Quenton White and Flora Holland; Brian L. Kuhn, Shelby County Attorney, Thomas E. Williams, Assistant County Attorney, Memphis Tennessee, for the appellee, Mark H. Luttrell, Jr.

## OPINION

### I. FACTS AND ALLEGATIONS

Davalon Higgins is an inmate confined in the Middle Tennessee Correctional Center Annex (MTCC). In March of 2003, he applied to be admitted into the center's work release program. The policies of the Tennessee Department of Correction (TDOC) and MTCC impose stringent requirements on participation in work release.<sup>1</sup> On April 8, 2003, Mr. Higgins received a letter turning him down for work release. The letter stated that a review of his records revealed that he was a member of a Security Threat Group (STG), a gang known as the Vice Lords. According to written policy, "confirmed members of any security threat group" are ineligible for work release.

In his complaint and in other documents in the record, Mr. Higgins claimed that he is not and has never been a member of the Vice Lords or of any other criminal gang and that he was not aware that his record mistakenly indicated such membership until he received the rejection letter. The State did not respond to his factual allegations. Since the plaintiff's claims were dismissed on a Tenn. R. Civ. P. 12.02(6) motion, for the purposes of our review we must construe the complaint liberally in his favor, and we must assume all of his allegations of fact to be true. *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn.1994); *Sullivant v. American Homes, Inc.*, 605 S.W.2d 246, 249 (Tenn. Ct. App. 1980).

Mr. Higgins claims that he has a perfect institutional record and that in every other respect he meets the requirements for work release. After discussing the matter with prison officials, Mr. Higgins learned that his classification as an STG member was not based on any activities he had been involved in while in prison, but was included in his record because of information received from the Shelby County Sheriff's Department.

Mr. Higgins wrote to the warden asking to have the gang label expunged from his record. When that did not succeed, he wrote a letter to the Shelby County Sheriff's Department, asking for further information. Sheriff Mark Luttrell responded with a letter stating: "We had our General Investigative Unit look into this matter. They found your name had been entered into the gang intelligence information computer in 1999. The person who validated this information is no longer with the facility."

Internal documents from the Sheriff's office appended to Mr. Higgins' complaint indicate that in 1999 only one staff member in the Shelby County Jail was assigned to monitor gang activity and that "there were no incidents recorded in the Jail Management System that would have been used to validate Higgins as a member of a Security Threat Group." The normal procedure was to

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<sup>1</sup>Tenn. Dep't of Corr. Policy No. 505.07 states that inmates may apply for work release if they are first time offenders who are within twenty-four months of their earliest release date, have not been convicted of any Class A or B disciplinary infractions within the last twelve months, or any Class C disciplinary infractions within the last six months and have met several other requirements.

interview those suspected of being gang members and to score the interview on the basis of a points scale from a form supplied by the Tennessee Bureau of Investigation. The name of the person who conducted such an interview with Mr. Higgins is not included in any document in the record, but only the information that the employee no longer worked for the Sheriff's office. Interestingly, one document from the Sheriff's office states that Mr. Higgins was validated as a member of the Crips by the jail staff. That gang is apparently unconnected to the Vice Lords.

Sheriff Luttrell suggested that if Mr. Higgins wished to appeal the classification, the prisoner could contact the Tennessee Department of Correction Security Group Threat Coordinator or seek legal counsel.

## **II. LEGAL PROCEEDINGS**

On August 15, 2003, Mr. Higgins filed a pro se Complaint in the Chancery Court of Davidson County for violation of his civil rights under 42 U.S.C. § 1983. He named as defendants Commissioner of Correction Quinton White, Warden of MTCC Flora Holland, and Sheriff Luttrell. He asserted that being labeled as an STG member adversely impacted him in prison in many ways, including reducing the likelihood that he could be paroled. He further argued that the gang label would continue to follow him after release and would hinder his re-integration into society.

Mr. Higgins contended that it was a violation of his right to due process to place such a stigmatizing label on him without giving him a hearing or any opportunity to challenge the factual predicate for the label. He also argued that it was a violation of equal protection not to give him the same opportunity to participate in work release as was given to other inmates similarly situated and that it was a violation of the confrontation clause not to permit him to question those who decided he should be labeled as a gang member. He also alleged that Department officials had not complied with departmental policies and procedures regarding STG member designation.

Sheriff Luttrell filed a Motion to Dismiss the Complaint or in the alternative for summary judgment. He argued that while the Sheriff's Office did identify Mr. Higgins as a gang member, the procedure the Tennessee Department of Correction used to make its determination was an entirely independent one and thus that the Sheriff was in no way responsible for any grievances arising from the department's decision. Commissioner White and Warden Holland filed a joint Motion to Dismiss for failure to state a claim under Tenn. R. Civ. P. 12.02(6).

On December 12, 2003, the trial court granted Commissioner White and Warden Holland's Motion to Dismiss. The court noted that under the authority of *Sandin v. Conner*, 515 U.S. 472 (1995), due process protections for prisoners aggrieved by the actions of prison administrators can only be triggered by actions that impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." 515 U.S. at 486. The court went on to say, "if there were a hearing before an inferior tribunal that could have produced a record for review, Plaintiff may be able to seek relief by means of a common law writ of certiorari."

Mr. Higgins filed a “Motion for Court to Reconsider” its decision.<sup>2</sup> His motion included two arguments: that being labeled as a gang member did indeed impose “atypical and significant hardships” on him that could support his claim for deprivation of due process, and that he was entitled to relief because the TDOC violated its own rules by the manner in which it labeled him as a gang member. The court denied the motion on January 23, 2004. Its order did not address the question of certiorari or the TDOC rules or policies. On February 6, 2004, the court granted Summary Judgment to Sheriff Luttrell. This appeal followed.

### III. CONSTITUTIONAL CLAIMS

Mr. Higgins argued in his complaint that the defendants violated his constitutional rights by labeling him as a gang member and denying him work release without affording him due process or the right to confront the witnesses against him, and that their treatment of him was a violation of the equal protection clause.

The Due Process Clause of the Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Constitution Amend. XIV, § 1. Equivalent protections are found in The “Law of the Land” clause of the Tennessee Constitution, Article 1, Section 8. The Due Process Clause of the Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 1. A claim of denial of due process must be analyzed with a two-part inquiry: (1) whether the interest involved can be defined as “liberty” or “property” within the meaning of the Due Process Clause; and, if so (2) what process is due in the circumstances. *Board of Regents v. Roth*, 408 U.S. 564, 571-73, 92 S. Ct. 2701, 2706-07, 33 L. Ed. 2d 548, 557-59 (1972). Deprivation of an interest which is neither “liberty” nor “property” does not trigger the procedural safeguards of the Due Process Clause.

“Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights,” *Jones v. North Carolina Prisoners Labor Union*, 433 U.S. 119, 125, 97 S. Ct. 2532, 2537, 53 L. Ed. 2d 629, 638 (1977) (citing *Price v. Johnston*, 334 U.S. 266, 285, 68 S. Ct. 1049, 1060, 92 L. Ed. 1356, 1369 (1948)). An individual who is lawfully incarcerated has lost his or her liberty and has no liberty interest in avoiding deprivations that are within the expected parameters of incarceration, that are not a dramatic departure from ordinary prison confinement, or do not impose an atypical hardship. *Sandin*, 515 U.S. at 484-86, 115 S.Ct. at 2300-01.

It is well settled that an inmate has no constitutionally protected liberty interest in a particular security classification or housing assignment. *Olim v. Wakinekona*, 461 U.S. 238, 245, 103 S.Ct. 1741, 1745, 75 L.Ed.2d 813 (1983); *Newell v. Brown*, 981 F.2d 880, 883 (6th Cir. 1992); *Beard v. Livesay*, 798 F.2d 874, 876 (6th Cir. 1986). Although Mr. Higgins has alleged various detrimental

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<sup>2</sup>The Tennessee Rules of Civil Procedure do not authorize “motions to reconsider,” and the trial court therefore correctly construed Mr. Higgins’ motion as a motion to alter or amend pursuant to Tenn. R. Civ. P. 59.04. See *McCracken v. Brentwood United Methodist Church*, 958 S.W.2d 792 (Tenn. Ct. App. 1997).

consequences arising from his designation as an STG member, none of the alleged consequences infringe on any interest recognized by the courts as being protected by the Constitutional due process requirement.<sup>3</sup> Thus, Mr. Higgins has not identified a liberty or property interest that would trigger the due process requirements, and the trial court correctly dismissed those claims.

Mr. Higgins also argues that it was a violation of the confrontation clause to label him as a gang member without giving him the opportunity to confront the witnesses against him. We note that both the Sixth Amendment to the U.S. Constitution and Article 1, Section 9 of the Tennessee Constitution give defendants the right to confront adverse witnesses “in all criminal prosecutions.” Neither amendment says anything about confrontation of witnesses during internal proceedings for the classification or discipline of prisoners who have already been convicted.<sup>4</sup> Mr. Higgins has cited no case in which the confrontation clause has been applied to claims such as his, and we have been unable to find any such cases. The burden placed upon prison management by such a requirement is not justified.

Mr. Higgins also argues that he is being treated differently from other inmates who have been allowed to participate in work release, and that such differential treatment constitutes a violation of the equal protection clause. However, security is a primary concern for prison officials, and they must have the discretion to determine who may be allowed outside the secure perimeter of the prison and who may not. Treating prisoners differently based upon security concerns serves a legitimate state interest and thus does not implicate the equal protection clause. *Jaami v. Conley*, 958 S.W.2d 123, 126 (Tenn. Ct. App. 1997). *See also Meachum v. Fano*, 427 U.S. 215, 224 (1976).

Mr. Higgins only cited constitutional claims in his initial Complaint. The trial court dismissed that Complaint on a Tenn.R.Civ.P. 12.02(6) motion for failure to state a claim. The standard of review for such a motion requires this court to take the factual allegations of the complaint as true, and to review the trial court’s legal conclusions *de novo*, without giving any presumption of correctness to those conclusions. *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999); *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). We have reviewed Mr. Higgins’ constitutional claims, and found them to be without merit regardless of the truth or falsity of his factual allegations. We therefore affirm the trial court’s dismissal of those claims.

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<sup>3</sup>Mr. Higgins does not allege he was placed in the STG program or was transferred to the special housing unit for some STG members. He apparently has remained in the general population both before and after he found out TDOC had confirmed him as an STG member. Consequently, we are not called upon to determine whether any such transfer and the conditions imposed constitute an atypical hardship or otherwise exceeds the deprivations generally associated with incarceration. *See Wilkinson v. Austin*, \_\_\_ U.S. \_\_\_, 125 S.Ct. 2389, 2396 (2005)(holding that placement in an institution for highest maximum security inmates triggered due process concerns because of the extreme difference in restrictions and conditions.)

<sup>4</sup>The Policies and Procedures of the Department of Correction do provide a limited right to confront adverse witnesses during disciplinary hearings. *See* Tenn. Dep’t of Corr. Policy No. 502.01(E). However, this case does not involve disciplinary proceedings.

But that is not the end of our inquiry, for Mr. Higgins may still have a cause of action under state law through the common law writ of certiorari. *See Willis v. Tennessee Dept. of Correction*, 113 S.W.3d 706, 711 (Tenn. 2003). It is evident that the relief available under the writ cannot be obtained from the Shelby County Sheriff's Department, but only from officials of the Tennessee Department of Correction. Accordingly, we affirm the dismissal of all claims against Sheriff Luttrell and his department.

#### IV. REMAINING CLAIM

Mr. Higgins' remaining claim is that the TDOC failed to follow its own written procedures regarding designation of an inmate as a member of an STG, that he was inaccurately labeled as an STG member without his knowledge or the opportunity to contest, and that he was prejudiced by that designation.

To combat institutional violence and disruption related to gang activity, TDOC has developed a set of policies and procedures designed to identify actual and potential gang members and to monitor inmate conduct for any signs of gang-related activity. The general policy states:

Inmates are prohibited from being members of an STG. The TDOC shall collect and maintain information and respond appropriately regarding inmates who are members, or who are closely associated with members, of security threat groups.

Tenn. Dep't of Corr. Policy No. 506.25(V).

The procedures describe ongoing monitoring activities, initial screening of inmates for pre-incarceration gang membership, continuing observation to identify gang or STG membership during incarceration, and various methods of dealing with gang related activity and STG members. There is an STG Unit to house some confirmed STG members who pose a threat. Tenn. Dep't of Corr. Policy No. 506.25(IV)(I). While inmates identified as STG members are normally placed in general population, they are subject to "reclassification" and placement in "the STG program." Tenn. Dep't of Corr. Policy No. 506.25 (VI)(J)(2).

As noted earlier, the TDOC policies on work release disqualify from eligibility for that program any "confirmed" members of any SGT. Similarly, TDOC policies and procedures define a Security Threat Group Member as "[a]n inmate who has been investigated, identified, and confirmed as a member of a security threat group." Tenn. Dep't of Corr. Policy No. 506.25(IV)(6). The policies and procedures on STG Intelligence define "confirmation" as the "[f]ormal process that determines and classifies the level of involvement an inmate has in a security threat group."<sup>5</sup> Tenn.

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<sup>5</sup>The policies also authorize maintenance of files on suspected STG members "who have not yet met the criteria for confirmation but are suspected of STG activity or affiliation." Tenn. Dep't of Corr. Policy No. 506.25(VI)(F)(3).  
(continued...)

Dep't of Corr. Policy No. 506.25(IV)(B). That process is described in Tenn. Dep't of Corr. Policy No. 506.25(VI)(F)(1) and (2), which reads:

F. Designation as an STG Member

1. During the initial classification/intake process, the institutional STG coordinator shall interview all inmates admitted to TDOC custody to assess their STG affiliation. Any tattoos or identifying marks shall be clearly photographed during this period and as discovered throughout his/her incarceration. All photographs shall be placed in the inmate's STG intelligence file, along with a written description. Confirmation of STG member may be based upon information received from other criminal justice agencies, institutional staff, or the inmate's possession of any documents, materials, or symbols identified with an STG.
2. Upon completion of the STG interview, each inmate is required to sign the STG interview form. If the inmate refuses to sign the STG interview form, the institutional STG coordinator shall document accordingly. The self-admission points on CR-3536 shall not be applicable for STG confirmation if the institutional STG coordinator does not sign the interview form or indicates the inmate refused to sign the interview form. Inmates shall be notified of STG confirmation on CR-3593, STG Placement/Appeal.

The interview form referenced in Tenn. Dep't of Corr. Policy No. 506.25(F)(2) uses a point system to rate participation in STG activities, based on contact with STG members, the wearing of STG colors, the existence of STG tattoos, and other indicia of gang membership. Statements, observations, photos and other evidence confirming the points allocated are placed in a confidential intelligence file. Receipt of a certain number of points (10), whether at intake or later during incarceration, triggers "confirmation" as an STG member. Tenn. Dep't of Corr. Policy No. 506.25(VI)(F)(4).

Once an inmate is "confirmed" as an STG member, the policy requires that the inmate be notified by being given a specified form. Tenn. Dep't of Corr. Policy No. 506.25(VI)(F)(4). A copy of that form is included in the Tenn. Dep't of Corr. Policy No. 506.25 and 506.26 and is titled "Confirmation Notification." (CR-3593). Depending on which boxes are checked, it informs an inmate that he has been confirmed as an STG member, or recommended for placement in the STG Program, or both. The form includes a portion in which the inmate can indicate his desire to appeal the decision "recommending me for placement in/return to (circle one) the STG Program" to the Warden and ultimately the Assistant Commissioner of Operations. Tenn. Dep't of Corr. Policy No. 506.25(VI)(M)(2). The policy specifically provides that "[o]nly the reasons for placement may be

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<sup>5</sup>(...continued)

The procedures provide for notification to any inmate whose STG involvement is confirmed.

appealed.” Completing the form triggers the appeal process from “placement in the TDOC STG program” described in other parts of the policy. Tenn. Dep’t of Corr. Policy No. 506.25(IV)(M)(2). It is important to note that the policy does not provide an appeal for confirmation of STG membership, but only provides an appeal for placement in a STG Program.

The policies and procedures also provide for requesting removal of the STG designation. The inmate must file a written Renunciation form renouncing membership in the STG; the inmate is debriefed to assess the veracity of the renunciation; and the renunciation must received approval of specified officers. If approved, the inmate must go through a “renunciation process,” including a mandatory anger management or cognitive behavior program, and one year without disciplinary offenses. After the year, and successful completion of the “renunciation process,” the STG label may be removed and other measures taken. *See* Tenn. Dep’t of Corr. Policy No. 506.25(K) and (L). Obviously, this process does not address the issue of wrongful or inaccurate designation.

Other than the renunciation process and the process for appealing from placement in the STG Program, we find no procedure for an inmate to challenge or appeal his designation or confirmation as an STG member.

Mr. Higgins has alleged that he was not interviewed by TDOC when he entered prison and that he was never given the Confirmation Notice. He alleges that officials have acknowledged that his designation of an STG member was not based on any activity in prison or in jail prior to being sent to prison. The Sheriff acknowledges no evidence or other material exists to document the initial determination by an employee who no longer works there.<sup>6</sup> He points to the discrepancy as to which gang he supposedly belonged to. Finally, he lists various consequences of the STG designation in prison and beyond. He alleges he was denied work release eligibility specifically and only because of the STG designation.

The factual allegations in Mr. Higgins’ filings, along with the documents attached thereto, are sufficient to state a claim under the common law writ of certiorari. In *Willis v. Tennessee Dept. of Correction*, 113 S.W.3d 706 (Tenn. 2003), the Tennessee Supreme Court held that a prisoner who alleged TDOC failed to follow its own rules for disciplinary proceedings and that he was prejudiced by that failure stated a claim for relief sufficient to survive a motion to dismiss. *Id.* at 713. The Court held that a decision resulting from such a flawed process was subject to judicial review under the common law writ of certiorari. The Court concluded that because the procedures were designed to insure fairness, reliability, and impartiality, and because the integrity of disciplinary systems were important to the stability of correctional operations, “If the Tennessee Department of Correction were to violate its own policies to such a degree that it administered punishment without a reliable

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<sup>6</sup> Although Tenn. Dep’t of Corr. Policy No. 506.25(F)(1) states that “[c]onfirmation of STG membership may be based upon information received from other criminal justice agencies,” we do not interpret that to mean TDOC may rely on a conclusion or designation from another agency. Further, Mr. Higgins notes that the only information the Shelby County Sheriff’s Office could provide was that some unnamed former employee had determined, for reasons unknown, that he was a gang member.



determination of guilt, such a violation would be without legal authority and an abuse of discretion.” *Id.* at 714.

Although the *Willis* holding was made in the context of disciplinary proceedings, its reasoning applies to the situation before us. Mr. Higgins alleged that TDOC incorrectly labeled him an STG member and did not follow its own procedures for such designation, all resulting in prejudice to him. Controlling STG-related activity in prisons is important to maintaining the stability of correctional operations and to protecting inmates and staff. Since TDOC has adopted written policies and procedures to deal with the problem of STG activity, we must assume it considers those procedures necessary to the effectiveness of attempts to reduce the problems associated with STG membership. While courts will generally decline to second-guess correctional official’s determinations of security risks and classifications, judicial review is available to determine whether TDOC has acted within legal authority and not arbitrarily or capriciously, *i.e.*, in compliance with its own policies and procedures.

## V. AVAILABILITY OF THE WRIT

Although Mr. Higgins’ original complaint did not use the term “common law writ of certiorari” or phrase his claim in terms associated with that type of action, it included factual allegations that TDOC failed to follow its written procedures. After the State defendants filed a motion to dismiss based on the lack of a constitutionally-protected right to or interest in a particular security classification or job, Mr. Higgins filed response opposing dismissal.

In that response, he made it clear he was not asserting that he was entitled to be on work release but, instead, claimed that TDOC had incorrectly designated him as an STG member without notice to him and without following its policy, which he quoted. He also challenged the designation, which he was told was based on “outside intelligence sources,” without an interview by TDOC staff. He alleged the failure to follow procedures had deprived him of the opportunity to dispute the designation. He specifically alleged the defendants had “clearly not complied with” the policy. These allegations obviously allege that TDOC failed to comply with its written procedures resulting in prejudice to him.<sup>7</sup>

Under *Willis*, *supra*, these allegations are sufficient for a common law writ of certiorari action. The writ, if issued, is an order to the lower tribunal or decisionmaker to file a record so that the court can determine if the petitioner is entitled to relief. *Willis*, 113 S.W.3d at 712. Review of the decision is confined to the record and is limited in scope to whether the decisionmaker has exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently. *Id.*

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<sup>7</sup> After the trial court dismissed his lawsuit, Mr. Higgins sought amendment of that order in which he reiterated his argument that TDOC had not followed its policy and procedures and listed various ways in which the STG designation prejudices him. These were not new allegations.

When the trial court dismissed Mr. Higgins' constitutional claims, it stated, "if there were a hearing before an inferior tribunal that could have produced a record for review, Plaintiff may be able to seek relief by means of a common law writ of certiorari." Thus, the trial court appears to have been under the impression that Mr. Higgins could obtain relief under the common law writ of certiorari only if there existed a record of a hearing before a lower tribunal.

Of course, Mr. Higgins' claim is that he has been deprived of any opportunity to challenge his STG status and never was allowed a hearing on his designation. We do not hold that the prison administrators are required to hold a formal hearing to determine whether an inmate has been correctly confirmed as an STG. However, to hold that the absence of a record from a hearing precludes issuance of the writ could allow administrators to avoid judicial review by failing to convene a hearing or failing to follow other procedures designed to produce a record. That consequence is neither desirable nor authorized by law.

In appropriate circumstances, the common law writ of certiorari may be used to seek judicial review of a decision made by a single administrator, where there was no involvement by a board or tribunal, and where no formal adjudicative hearing occurred. Tenn. Code Ann. §27-8-101 (authorizing issuance of the writ to review decisions by an inferior tribunal, board or officer in certain circumstances); *Roberts v. Brown*, 310 S.W.2d 197 (Tenn. Ct. App. 1957)(use of the writ to review the actions of a city clerk who refused to certify a petition for recall to election commissioners); *Mayor of City of Jackson v. Thomas*, 313 S.W.2d 468 (Tenn. Ct. App. 1957)(use of the writ to review the discharge of housing authority commissioners by the city mayor).

In the case before us, there exists a record of the decision involving Mr. Higgins's STG designation and his attempts to have that reviewed, as demonstrated by the documents attached to his filings. Of course, the court cannot rely on a partial record filed by the petitioner, and the writ of certiorari procedure requires that a complete and certified official record be filed by TDOC in response to a writ if one is issued. Only after the record has been filed may the court determine if TDOC has acted illegally and arbitrarily by failing to follow its own policies and procedures, and therefore, whether Mr. Higgins is entitled to relief.

Because the trial court apparently incorrectly believed that it was without authority to issue a writ of certiorari since there was no hearing below, we reverse the trial court's dismissal of Mr. Higgins' complaint to the extent it states a claim under the common law writ of certiorari. We remand the case to the trial court so that it can determine whether to issue the writ of certiorari, mindful that the defendants might raise other defenses. If the court issues the writ, it is to review the actions of TDOC to determine if the defendants acted illegally or arbitrarily.

We are aware that because of the sensitivity of the management of Security Threat Group issues in prison, the Department's policies and procedures contain provisions to maintain the confidentiality of files relating to those issues, and we accordingly direct the trial court to consider orders to maintain that confidentiality where necessary.

## **VI.**

We affirm the trial court's dismissal of the plaintiff's constitutional claims against Commissioner White, Warden Holland, and Sheriff Luttrell. We also affirm dismissal of all claims against Sheriff Luttrell. However, we reverse the dismissal of the plaintiff's complaint alleging a cause of action under the common law writ of certiorari. We remand this case to the Chancery Court of Davidson County for further proceedings as necessary. Costs on appeal are assessed against the appellees, Quenton White and Flora Holland.

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PATRICIA J. COTTRELL, JUDGE